**Court No. 2**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**A.O. NO.381 of 2002.**

The Original Insurance Company Ltd.,
through its Divisional Manager,
Divisional Officer, Bhotia Parao,
Haldwani (Nainital)

..... Appellant

**Versus**

Smt. Sangeeta Verma and five others. ..... Respondents

**.....**

**Sri Tanveer Alam Khan, learned counsel for the appellant.**
**Sri Dharmveer, learned counsel for the claimant/respondents 1 to 4.**
**Sri K.K. Shah, learned counsel for the respondent No.6.**

**Dated: 27th Aug., 2004**

**Hon'ble P.C. Verma, J.**
**Hon'ble B.S. Verma, J.**

This appeal has been preferred by the Opp.party/appellant against the judgment and order dated 16.11.2002 passed by the Motor Accident Claims Tribunal/Addl. District Judge, Kashipur (District-Udham Singh Nagar) in Motor Accident Claim Case No. 91 of 2002, whereby the appellant-Oriental Insurance Company has been directed to pay Rs. 14,11,000/- as compensation to the injured claimant alongwith interest at the rate of 9% per annum.

2- Brief facts giving rise to this appeal are that on 30.3.2002 in the night at about 10.45 Shailendra Kumar alongwith his wife-petitioner Sangeeta Verma and younger brother was coming from Bareilly to Kashipur by his Maruti Zen Car. When they reached at Mahtosh mod at Rudrapur-Gadarpur Road, Tractor trolley No. UP 04-3231

which was coming from the side of Gadarpur and being driven rashly and negligently by its driver hit the said Maruti Car from front side. Due to this accident Shailendra Kumar and Smt. Sangeeta Sustained grievous injuries. Sri Shailendra Kumar died in the Hospital during treatment in the same night. He was 27 years of age and hale and hearty at the time of accident. He was holding a post of Executive in the Air Conditioned Division of Blue Star Limited. Chandigarh after obtaining a degree of Bachelor of Engineering in first division from Nagpur University. By the said employment Shailendra Kumar was getting Rs. 9750/- as monthly salary. The claimants, who are dependents of the deceased, filed the claim petition to the tune of Rs. 50,00,000/- as compensation on account of loss of dependency due to death of Shailedndra Kumar.

3- The Opp. party No.1 in this written statement stated that he is registered owner of the said tractor. His son Preetam who was having a valid driving license was driving the tractor. He further alleged that the accident occurred due to rash and negligent driving of the deceased himself. He also alleged that the tractor was insured with Oriental Insurance Company at the time of accident. The Opp. party No.2-Oriental Insurance Company also filed its written statement denying all the allegations made in the claim petition. Opp. party No.3-United India Insurance Company with whom the said Maruti Car was insured also filed its written statement denying all the allegations made in the claim petition. The Tribunal, on the pleading of the parties, framed necessary issues and after recording evidence allowed the claim petition accordingly. Feeling aggrieved, the Opp. party No.-Oriental Insurance Company has come up in this appeal.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Motor Vehicle Act, 1989 and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. We have gone though the entire material on record and perused the impugned judgment. The record does not reveal that application has been moved for permission under Sec. 170 of the aforesaid Act. In this case the owner of the offending vehicle has contested the case before the Tribunal. There is neither permission of the Tribunal under Section 170 of the Act, nor there is nay finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicoletta Rohtagi and others, reported in (2007) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, none of the contentions raised by the learned counsel for the appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussions, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months.

**(B.S. Verma, J.)** **(P.C. Verma, J.)**

**P. Singh**